

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
FLYNN, et al., : Docket #21cv2587
Plaintiffs, :
- against - :
CABLE NEWS NETWORK, INC., : New York, New York
November 23, 2022
Defendant. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE SARAH L. CAVE,
UNITED STATES MAGISTRATE JUDGE

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE COURT: Good morning, this is Magistrate Judge Cave. We're here for a conference in Flynn v. CNN, case number 21cv2587. May I have appearances starting with the plaintiff please.

MR. STEVEN BISS: Judge Cave, good morning, and Happy Thanksgiving. This is Steve Biss, I represent the Flynnns.

THE COURT: Okay, good morning, and same to you.

MS. KATE BOLGER: Good morning, Judge Cave, and Happy Thanksgiving. This is Kate Bolger on behalf of CNN, and the other two people on the line are my colleagues Meena Krishnan and Lindsey Cherner who actually do most of the real work, and so I wanted them to have the chance --

THE COURT: Great, well, we're always thankful for the people who do the real work. All right, so a few discovery issues today. I'd like to start with the privilege, CNN's privilege log as the parties had provided me with a privilege log and then CNN had submitted to me for in camera review some of the documents that are listed on that log. So, Ms. Bolger, I've had a few follow-up questions for you after now reviewing the log alongside the documents.

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And so one question is there's a reference to, I think it's in, and I'll go by the document number, the numbering on the log, not the Bates numbers, as I refer to these documents. Document number 10 refers to the row, the document says it's notes from the row. What is the row?

MS. BOLGER: The row is generally a kind of a nickname (indiscernible) given to people who review content for editorial purposes. Generally, when things are sent to be, sent for attorney-client review, they're all reviewed simultaneously with attorney-client review standards and editorial. So they all input their information on the same email exchange.

THE COURT: Okay, understood. I wasn't show it was a show or --

MS. BOLGER: Understood, Your Honor.

THE COURT: Okay. All right, and then there is another reference to, on document number 83, it's T-R-A-I-D, Traid or Triad (phonetic), I'm not sure.

MS. BOLGER: TRIAD is a nickname given to, as I said, the process of people reviewing is sort of iterative, and TRIAD is those three groups, the attorneys, the (indiscernible), and the row. It goes at once and they kind of iterate on top of each other, but

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TRIAD is the shorthand term given to those three groups.

THE COURT: Okay, great. And then document number 82 refers to someone named Richard Davis. Is he an attorney?

MS. BOLGER: I don't know the answer to that, Your Honor.

THE COURT: Okay. Maybe if that's something that your helpful colleagues might be able to check while we're talking, I'll move on to something else, you know, another sort of more categorical question. And that is obviously each of the documents is an email chain, and the log, it appears to me, to be referring each entry on the log is just the top email in the chain. Am I interpreting the log correctly?

MS. BOLGER: Yes. Yes, Your Honor, although we produced every, endeavored to produce every email in the chain, if that makes any sense. And so every email should be logged even if every email is not logged in each square.

THE COURT: Right, right, okay. That seemed to me to be correct. But let's just say, you know, some of these I think I'm going to have an issue with the privilege, and I can explain to you, you know, some examples of that. But if I were to direct you to

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produce let's just say entry number 4, and that entry number 4 refers to just the top email from Ashley (indiscernible) to Donie O'Sullivan, will you understand that I'm just referring, you know, what I'm calling for is the production of that email specifically, and it's on the same piece of paper with other documents as to which there's no dispute about the privilege. I guess it's just a matter of redacting, so things that are privileged and producing the rest. Does that make sense?

MS. BOLGER: That does make sense. Your Honor, I will tell you that we made those calls because it was the producer and the news gatherer in that case doing the instruction of the attorney-client, of the attorney, which is why we thought (indiscernible) iterative. They are all building on each other's ideas, and they all are modifying the report as reflected in the comments from (indiscernible). So I do think it's privileged, and that was the basis of our assertion, but I do understand what you're saying, Your Honor. But the theory behind the privilege was that everybody was commenting on what Mr. Keel was saying rather than just discussing in the abstract without him.

THE COURT: Right, but I guess to push back on

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that a little bit, it seems to me like there's sort of multiple threads in this chain, and there's certainly Mr. Keel's comments and then there are very clearly - which are, there's no dispute about Mr. Keel's comments being privileged, and then there are people responding to Mr. Keel directly. But then there do seem to be separate threads where someone else is making a different comment that doesn't relate to what Mr. Keel said, and then there may be two or three responses to that non-Keel comment. And those to me don't seem to be privileged.

MS. BOLGER: Although, in general, they were often on a version of the script that included Mr. Keel's comments.

THE COURT: Okay.

MS. BOLGER: So in other words if you were to disclose that document, you might be, you would disclose Mr. Keel's comments below.

THE COURT: Okay. All right, and then another one of the documents, I think is 47, is labeled, quote/unquote, "the final script." It seems to me if it's the final script, then that's what was used, that that should be produced. Right?

MS. BOLGER: It's the final script that's

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being sent for review. We did produce the final script, so Mr. Biss has what was aired. That is the final script that was reviewed.

THE COURT: All right.

MS. BOLGER: So, in other words, it is a document seeking legal advice is how we perceive it.

THE COURT: Okay, well, there seem to be two. So document number 4 is what appears to be sort of the first draft that everybody comments on, and then there's comments, comments, comment, and revisions, and then document 47 is labeled, quote, "the final script," and there don't appear to be any comments after that. That's what I'm asking.

MS. BOLGER: Yes, but that document is to legal asking them to review it one last time. It's not, that's not - that document is sent specifically for final legal review, not for publication.

THE COURT: Okay, I see. All right, and --

MS. BOLGER: And just to answer your question, Mr. Davis is in standard and practices, so he's that third row editorial, legal is legal, and standard and practices is what Mr. Davis is. He's not a lawyer, he's a standards guy.

THE COURT: Okay. And then on document number

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87 is a text chain I think between, well, I'm not sure. I guess (indiscernible) and Ms. Sansant (phonetic), and according to the privilege log, this was produced redacted or portions of it were redacted for privilege?

MS. BOLGER: Yes.

THE COURT: Okay. All right. And are you able to tell me which portions were redacted? I only have the full version. So is it, I think the third text bubble, is that the one that was redacted?

MS. BOLGER: I think so, Meena or Lindsey, can you just tell me that? We only redacted the portion discussing legal advice and, Meena, it's the third bubble, right?

MS. KRISHNAN: Yes, the third bubble is the one that mentions legal.

MS. BOLGER: Yeah. Yes, that's right, it's the third bubble.

THE COURT: Okay, great, thank you. Okay, well, like I said, I never view the documents twice. I think in light of what Ms. Bolger's has told me today, I just need to do a final pass through these. So I don't think I'll be able to get you my final, I'm certainly not going to be able to give you my final ruling on the documents during this conference, but you'll have it

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2 very shortly after the holiday. But that's helpful, and
3 just so that I have a full record, I am going to ask the
4 parties to order a transcript of today's proceeding so
5 that I can have that alongside my final review of the
6 documents.

7 MS. BOLGER: And, Judge Cave, I'm happy to
8 answer any questions or have Meena who knows more than
9 me answer any questions if offline or however it's
10 helpful. I will tell you that these were not like easy
11 parsing. We were trying very hard to parse them as
12 carefully as possible, and we feel very comfortable that
13 we were, you know, in good faith trying to make sure
14 that the comments were iterative of each other or
15 directly seeking legal advice like 47.

16 THE COURT: Right, I guess I just, without
17 disclosing the contents of any of them, I think there
18 are some that are very clearly not, don't have anything
19 to do with legal advice. And so I think there are a few
20 that can --

21 MS. BOLGER: As long as you would please watch
22 out for the script at the bottom which has --

23 THE COURT: I understand, yes. I understand,
24 I understand. Okay, all right, that's all very helpful,
25 thank you.

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Okay, so, Mr. Biss, thank you for your patience while I worked through all those questions, and like I said, I'll have a decision for you hopefully next week. So I know that your letter came in second, but I'll pick through your issues first which CNN responded to last night, and I guess maybe there are some questions about whether any of these issues are, in fact, ripe.

But I guess the first issue, Mr. Biss, is the ratings documents, and it looks like from CNN's response that CNN is still working on that issue. So is there anything you need to discuss on that?

MR. BISS: No, Your Honor, I'm willing to keep working with them on that. I mean Ms. Bolger has indicated in the past on various requests, as Your Honor is aware, that they're working on it, and they've supplemented where possible or she's told me we don't have any documents, and I think that would end the matter. So, number one, I think I'm comfortable continuing to work with counsel on that.

THE COURT: Okay, same for viewership? It looks like that's in progress. Some things have been produced, and if there's anything else, they'll produce it. Is there anything else you need to discuss on that, Mr. Biss?

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2 MR. BISS: Judge, I think, again, I think I
3 can work with counsel on that. They can just point me
4 to what they produced. I just don't recall that I got
5 anything on viewership, but it may be that it's there
6 because there's been a lot produced by them. So if they
7 could just point that out to me, I think we can handle
8 that, counsel can handle that and resolve that.

9 THE COURT: Okay.

10 MS. BOLGER: There in footnote 1 in the
11 letter.

12 MR. BISS: Pardon me?

13 MS. BOLGER: We listed them in footnote 1 for
14 you.

15 MR. BISS: Okay.

16 THE COURT: All right, the next on your list,
17 Mr. Biss, is dossiers and research. Is this issue ripe
18 today?

19 MR. BISS: I think it is. We did have a meet
20 and confer on this back I think on October 4 is when we
21 had a meet and confer on this. Our last meet and
22 confer. And, again, I addressed it subsequently in an
23 email as well. So I do think it's ripe.

24 THE COURT: Okay. All right, Ms. Bolger, do
25 you want to expand on your response in your letter?

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MS. BOLGER: Sure. The question asked broadly for any dossiers and research related to Trump, General Flynn, or QAnon. It is not limited to the reported issue here. And just a reminder, Your Honor, that we have produced all responsive non-privileged documents related to the report, and we are continuing to make sure we've covered all our bases on that. So to the extent that we have documents about Trump, General Flynn, or QAnon related to this report, we've produced them. This is (indiscernible) focused on (indiscernible), well, focused on the publication of those statements, and, you know, we're entitled to provide information related to those statements.

Anything else would be, one, outrageously burdensome. I would remind you that Donald Trump was the President, General Flynn was the National Security Advisor, and there's millions of stories that have been done about them over time, as there have been millions of stories been done about QAnon.

And, second, to the extent that it seeks explicit news data and materials unrelated to those stories, that information would be privileged. And we talked about this briefly at the last conference, but it would be privileged under New York law because their

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2 journalists expected New York privilege. *Homer v.*
3 *Winter* in the Court of Appeals, millions of cases
4 talking about how when a journalists expects the
5 privilege, that's the privilege that you apply. So that
6 means if there's confidential information in there, it's
7 absolutely privileged, and if there's non-confidential
8 information in there, Mr. Biss would have to make a
9 showing that this information was highly material and
10 necessary, critical and relevant, and not available from
11 another source. And there's no way that he would ever
12 be able to make a showing that some document somewhere
13 that may or may not exist, by the way, about Donald
14 Trump or General Flynn or QAnon is critical and
15 necessary to defense of this action. So it's overbroad,
16 one, and, two, it calls from protected news gathering
17 material.

18 And, Your Honor, if you are contemplating
19 asking for the production of our news gathering
20 materials related to this piece, I would ask the
21 opportunity to brief that. Reverse privilege is
22 obviously incredible important to news organization, and
23 compelling the disclosure of this information over which
24 they have rights guaranteed to them by the First
25 Amendment, the New York State Constitution, and New York

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2 State law is really serious business for a news
3 organization. So I would ask that if we're really going
4 to talk about that, I'd be permitted to file briefing on
5 this. But to me this is a no-brainer. It is so
6 overbroad and so irrelevant that I don't think you
7 (indiscernible).

8 THE COURT: Right, right. Okay. I'm not
9 going to compel any production of dossiers and research
10 on former President Trump, General Flynn, or QAnon or
11 communications with January 6 committee regarding
12 General Flynn or QAnon. As it's been represented to me
13 by defendant's counsel, they've produced all responsive,
14 non-privileged documents relating to this report, and
15 obviously there's ongoing efforts to make sure that that
16 production is complete. But anything, you know, this
17 case is about one specific report, and even more so of
18 two or three second clip. And so the production the
19 plaintiffs are calling for are overly broad and would be
20 unduly burdensome and would be calling for things that
21 are just simply not relevant to this case. So that
22 request is denied.

23 Next, Mr. Biss, is documents about General
24 Flynn promoting a QAnon slogan.

25 MR. BISS: Yes, and, Judge, if I just may be

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2 heard briefly on the, obviously it's relevant to the
3 clip because the clip definitely shows a picture of
4 Donald Trump and General Flynn at a podium, and it says,
5 and I haven't listened to it in a week or so, but it
6 says words to the effect of General Flynn promoting a
7 QAnon slogan, Where We Go One, We Go All. So we want to
8 see any documents that would support that assertion in
9 the report, and it sort of goes along with number 6.

10 Obviously, it's our position that CNN targeted
11 my clients because of their familial relationship with
12 General Flynn. In discovery in this case there are zero
13 documents, no documents whatsoever that have been
14 produced that support the statement that's at issue in
15 the case. And so we want to know why the Flynn family
16 was targeted. Was it just gross negligence or was it
17 intentional? And why is General Flynn being targeted?

18 So what the Court - and so that's why I think
19 it's relevant, and it goes to the issue of why the
20 plaintiffs are, were introduced into this video. And
21 the broader question though is it also calls for the
22 discovery of information that would support why the, why
23 General Flynn was put into the report, why the report
24 was constructed the way it was, why the clip of
25 President Trump and General Flynn at a podium and flags

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of Where We Go One, We Go All were all put together for purposes of supporting this theme that these are all QAnon followers, like the people in, like the QAnon shaman and the others who were identified in the clip.

And, more importantly, it's consistent with CNN's discovery, and I guess what the Court doesn't know is that CNN is, has issued multiple subpoenas to third parties requesting any and all documents relating to General Flynn for a period going back to November of 2016, just extremely broad and expansive. And they're clearly, I guess they're clearly looking for some documents that tie my clients to conferences that General Flynn either spoke at or didn't speak at. But they have, you know, the latest subpoena they issued is to the, is to something called the Digital Soldiers Conference. And I guess what's going on is that somebody's Googling over at either counsel's office or CNN, Googling to determine where General, what conferences General Flynn went to, and then they subpoena every one of those conferences. And --

THE COURT: Well, respectfully, Mr. Biss, those subpoenas are not before me today, and so nobody has moved to quash those, but, you know, this issue goes to the truth of the matter asserted. So this is an

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affirmative defense for CNN. So if General Flynn and the Flynnns were, had promoted QAnon, then I assume what CNN will be arguing is that the statement they made about the Flynnns was truthful, and, therefore, they're not liable. So that's why that discovery is going in that direction.

MR. BISS: Right, and then by the same token my discovery is designed to show the falsity of it. My discovery is to show that General Flynn didn't promote any QAnon slogans and that General Flynn is not a QAnon follower, and guilt by association, neither are any of his family members.

THE COURT: Well, then your document request should be for any documents that show that General Flynn did not promote any QAnon slogans, not that he did. That would be an accurate request for what you're going at. So that to me seems like a more appropriate request. If CNN had a document showing that General Flynn did not promote QAnon, then that would be responsive.

MR. BISS: But, Your Honor, that's like trying to prove a double negative. I mean he's not a QAnon follower, and he never promoted QAnon slogans, and as many times as they want to say it, it's not true. And

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so I just requested show me the evidence, show me where he's a QAnon follower. And they - that's really what I'm trying to get at. I want to make sure that when I argue to the jury that General Flynn is not a QAnon follower and he didn't promote QAnon slogans, and everything that CNN put in that report is false, I want to make sure that they can't pop up and say, yeah, but we got a video over here showing him at a conference with --

THE COURT: That would be problematic for other reasons. Because if they rely - there's no way they are relying on something at trial that they haven't produced in discovery. So that's your protection there.

MR. BISS: And I understand that, but I just want to make sure that I get a full and fair opportunity to see all their evidence before I have to go to trial because I don't want to take any chances that --

THE COURT: But you will, Mr. Biss, so that's the rules, that's what we're doing. We're doing fact discovery. So if CNN has something that they're going to use to support their case at trial, they have to be producing it to you now whether you ask for it or not. So you're sort of - you're mixing things a little bit. Your protection is that if you're going to use it at

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2 trial, it has to be produced in fact discovery. So -
3 but - so let me ask Ms. Bolger, has CNN produced any
4 documents about General Flynn promoting the QAnon
5 slogan?

6 MS. BOLGER: So CNN produced the documents
7 relevant to this report. In the report Mr. Flynn uses
8 QAnon slogans, and he speaks at conferences for QAnon.
9 He is the coiner of the phrase Digital Soldiers, Your
10 Honor. He is the person who coined that term. That's
11 in the report. We've given you things in the report
12 that show that Mr. Flynn not only affiliated himself
13 with QAnon but actually raised the money off of QAnon.
14 That's how he paid his lawyers. Right? So the report
15 has that information.

16 There's no information that we would ever rely
17 on at trial that we didn't produce in discovery. We
18 clearly know the rules, Your Honor. And this material
19 is, which is, again, a massive amount of information,
20 right, General Flynn and his connections to QAnon have
21 been written about on every news organization across the
22 globe forever. It's a massive request. We gave what we
23 had related to the report. We're going to try to, as
24 you say, Your Honor, establish the substantial truth of
25 our report by subpoenaing other people, and I would add

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that Mr. Flynn's siblings have spoken at some of those conferences. General Flynn's siblings, including one of the plaintiffs here. So that's why we're seeking that discovery, Your Honor.

But it's not the same for us, right. What he can seek discovery about us is what we used to put together the report. We've given him that. If we were going to rely on something else at trial, we would give him that. But this is a hugely overbroad request, and, you know, it's such a hugely overbroad request that would, again, call upon news gathering materials for other reports.

THE COURT: Okay. All right, well, for the same reason as to number 3 and 4, I'm going to deny any request to compel CNN to search for all documents that show General Flynn promoted any QAnon slogan. It sounds like CNN has produced documents relating to the specific report that's at issue in this case and obviously has an ongoing obligation to produce any additional documents that clients related to this report, and then obviously to the extent it has any other documents that it intends to rely on at trial, those must be produced before the end of fact discovery. But that should alleviate any concerns that Mr. Biss was expressing.

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Number 6 I guess kind of addresses the same issue, right, Mr. Biss?

MR. BISS: I think it does, Judge. Again, for purposes of my pretrial preparation, I just want to make sure that I see all evidence that Jack Flynn is a QAnon follower, all evidence that Leslie Flynn is a QAnon follower, and all evidence that General Flynn's a QAnon follower. And the time period that's relevant in my view is the time period before they published the report because obviously if they had no evidence, they would've, they obviously were acting maliciously if they had no evidence in their possession.

So, again, I do think that evidence that General Flynn was a QAnon promoter or a QAnon follower is relevant. He's featured in the report. He is, he's in the lineup with the other members of the Flynn family. They're all accused of being QAnon followers. So I think it's fair game to ask them to produce any evidence they have that anybody in that lineup is a QAnon follower. So that's the basis of number 6.

THE COURT: Go ahead, Ms. Bolger.

MS. BOLGER: Just one housekeeping matter which is I thought this was number 5. So I think I'm confused, and I just don't want to - we are talking

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about the documents that support that General Flynn is a QAnon follower, right, that's what we're talking about?

THE COURT: Well, 5 and 6, well, number 5, I'm going off of Mr. Biss's letter. Number 5 is all documents that show --

MS. BOLGER: I'm sorry, I'm looking at my old letter which would explain my confusion.

THE COURT: Your letter has different numbering, so I was going with Mr. Biss's --

MS. BOLGER: I'm sorry --

(interposing)

THE COURT: That's all right.

MS. BOLGER: But, Your Honor, first of all, General Flynn is not a plaintiff here. If General Flynn were a plaintiff here, I can see maybe another conversation, although I would still say it was limited to the report. But I would remind you that this sudden interest in what CNN has on General Flynn is in no way relevant to this lawsuit because he's not a plaintiff here, and, in addition, this call is for (indiscernible) for something not related to this report, and as a third thing, is massively overbroad.

THE COURT: Okay, well, for the same reasons I denied the requests to compel for the production related

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2 to (indiscernible), I'm going to deny number 6.

3 Tell me about number 7, Anderson Cooper's
4 documents, Mr. Biss.

5 MR. BISS: So the Anderson Cooper's
6 involvement in this QAnon promotion by CNN is mentioned
7 in paragraph, beginning in paragraph 2. Anderson Cooper
8 was involved in multiple broadcasts at or around the
9 time that the report at issue in this case was produced
10 in which he talked about QAnon and how dangerous and
11 extremist he was and cultist and various other words.
12 And so in discovery we want to learn whether Mr. Cooper
13 has any documents that mention Jack Flynn or Leslie
14 Flynn or any member of the Flynn family, again, to
15 determine whether they, whether CNN has or had any
16 evidence that they were QAnon followers at the time that
17 they labeled them QAnon followers.

18 So Mr. Cooper is clearly somebody who was
19 involved in CNN's QAnon production, and so it would be
20 logical for him, if he has any documents, to have
21 documents that would show that Jack Flynn is a QAnon
22 follower and Leslie Flynn or Valeria Flynn or Laurie
23 Flynn or any other plaintiff, party. And I don't think
24 it matters that General Flynn is not a party in this
25 case because CNN has treated him as a party through its

1 PROCEEDINGS 25

2 various subpoenas. So that's the nature of number 7.

3 THE COURT: Did Anderson Cooper make any
4 statements about any of the Flynns?

5 MR. BISS: No, he didn't make any statements
6 about the Flynns at all, but that wouldn't mean that he
7 wasn't in communications with Donie O'Sullivan or
8 others. It just wouldn't mean that at all, the fact
9 that he didn't talk about the Flynns. The fact is he
10 talked extensively about QAnon and various, and sundry
11 people associated with QAnon, and we just want to know
12 if he ever talked about the Flynns, if he ever had
13 communications with third parties about the Flynns.
14 Because he could have a document in his possession that
15 says, well, they're not really QAnon followers, and
16 that's why I'm not going to feature them in any of my
17 reports.

18 So, again, I think it's, he's a logical person
19 to subpoena --

20 THE COURT: If he didn't say anything about
21 the Flynns and if he didn't think they were QAnon
22 followers, how does that help your claim?

23 MR. BISS: Well, I don't know what he thought
24 or did. That's why I issued the document request. I
25 don't know what his views are. He could have a treasure

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trove of documents in there, communications with third parties talking about the Flynn family, and he could have questioned why did you put them in this report? They don't --

THE COURT: So what? He didn't say anything about the Flynnns though.

MR. BISS: I don't know that - Judge, no one knows if he said anything --

THE COURT: There's a lot of people, there may be a lot of people who thought things about the Flynnns but never said anything. You're not, it's not a First Amendment violation to think something.

MR. BISS: Judge, I know, but he might've written something. He might've emailed something. He might have done, might've put a memo together.

THE COURT: But he didn't say it publicly. There's no defamation or false like claim for anything that Anderson Cooper did. Ms. Bolger, let me ask you this, you searched Mr. O'Sullivan's communications. Did that search encompass any communications he might have had with Anderson Cooper about the Flynnns?

MS. BOLGER: We searched Mr. O'Sullivan's communications related to this report. There's no - and all of Donie's emails actually. There's no

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2 communications with Anderson Cooper. Anderson Cooper
3 had no role in the report. We have no reason to believe
4 that Donie O'Sullivan and Anderson Cooper ever spoke at
5 all about this report or about the Flynns, you know,
6 Anderson Cooper wasn't involved in this report. This is
7 purely speculative. And I would add, again, it would be
8 news gathering materials related to a segment not at
9 issue, and the reporter's privilege would be implicated.
10 But just genuinely, Your Honor, Anderson Cooper had
11 nothing to do with this report. It's apples and
12 oranges.

13 THE COURT: All right, well, obviously, Mr.
14 Biss, you can ask, when you depose Mr. O'Sullivan, you
15 can ask him to confirm what Ms. Bolger just said, but
16 aside from that I'm not going to require any further
17 search by CNN on number 7.

18 Number 8 is two other reports, Mr. Biss.

19 MR. BISS: Yes, Your Honor, they're mentioned
20 in the amended complaint, and I have requested copies of
21 them.

22 THE COURT: Okay.

23 MR. BISS: And they're in paragraphs 2 and 15.

24 THE COURT: Okay, Ms. Bolger.

25 MS. BOLGER: I mean they're publicly available

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on the CNN website, but if we have copies, we'll - I don't see - we would provide the (indiscernible), I'm sorry. We haven't met and conferred on these, Your Honor, for the fifth request for production and the fifth request for production there's been no meet and confer. But I didn't understand whether Mr. Biss wanted news gathering materials or the published content. If CNN has a copy to give Mr. Biss, it would be of the published content, we would do that as a courtesy even though I don't think it's relevant. But the news gathering I would feel differently about. So we would agree to produce the published content to the extent that we have that.

THE COURT: Okay. All right, if you could please. Just that, not the, not all the backstory.

All right, number 9 is all Mr. O'Sullivan's social media accounts. Why is that, Mr. Biss?

MR. BISS: Well, it's obviously, he's the one who published and republished the report and the accusations that the, my clients are QAnon followers. They have requested all of our social media accounts to show that we are Q, I guess to show we are QAnon followers. And I want to see if Mr. O'Sullivan has any evidence at all anywhere that, to support his

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2 accusation. That's the purpose of requesting all of his
3 social media accounts. Not only may there be evidence
4 in there of further publications to other third parties
5 and direct messages and things like that, but, again, it
6 goes to the question of malice, whether he has any
7 documents to support the accusation.

8 THE COURT: Ms. Bolger, has Mr. Flynn searched
9 his social media or have you searched Mr. Flynn's -
10 sorry - Mr. O'Sullivan's social media for anything
11 related to the Flynnns or the report?

12 MS. BOLGER: We have, Your Honor. We'd just
13 like to mention that talking to a Bolger about a Flynn
14 and an O'Sullivan is a little bit confusing. But we
15 have, Your Honor. Mr. O'Sullivan did not use his social
16 media to news gather at all for this piece, and we did
17 check that. He does for other stories he has used it,
18 so his social media accounts and his direct messages
19 include privileged materials that wouldn't be relevant
20 here, but we have asked and we have searched and he does
21 not have material that is relevant to this report.

22 THE COURT: Okay, but aside from the report,
23 anything else about the Flynnns?

24 MS. BOLGER: I'm sure there's stuff in there
25 about General Flynn for sure. He reports on QAnon,

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that's his, one of his beats, right. I don't know that we have asked him specifically about Jack and Leslie Flynn. I can go make sure we have asked that specific question. But the question about General Flynn would necessarily implicate all kinds of news gathering materials for all kinds of other stories that Donie has done, and so that's very overbroad, but we can go back and ask about Jack and Leslie.

THE COURT: Yes, that's fine. If you can just doublecheck that, as you searched, that his social media for Jack and Leslie Flynn has been searched.

Okay, number 10. Mr. Biss.

MR. BISS: So in number 10, Judge, I went back and I did some research on prior reports that CNN has published where the phrase QAnon follower has been used. And in these series of requests, and there's a number of them, and I can't tell you how many, but there's a series of requests that all relate to the same subject matter, and that is what is CNN's definition of QAnon follower. And, again, I think it's relevant to the question of what a QAnon follower is. Judge Woods, I think Judge Woods has probably defined it, so I don't know this is relevant. But I want to know whether they disagree with Judge Woods's definition and how they

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2 define QAnon follower when they've produced this report.

3 THE COURT: Okay, but according to your
4 letter, number 10 asked about prior reports. So --

5 MR. BISS: Right, and so their prior course of
6 dealing, if you will, is obviously relevant to their
7 intent when they published the report on February 4,
8 2021. So I mean if they're using the same definition of
9 QAnon follower and that definition doesn't fit the
10 Flynn's, that's really, that's kind of where I'm going
11 here is I want to know --

12 THE COURT: It seems to me the only definition
13 that matters is Judge Woods's definition.

14 MR. BISS: I agree with that.

15 THE COURT: (indiscernible) defines it. So
16 whether CNN defined it differently or defined the word
17 follower of any other group differently doesn't seem to
18 me to matter. And is potentially very overly broad.
19 You know, as you said, Judge Woods's interpretation is
20 what really matters here. CNN could very well be wrong,
21 but that's up to Judge Woods. So I guess I'm not sure
22 why documents about CNN's statements in other contexts
23 would be helpful at all to that.

24 MR. BISS: Well, again, they might admit they
25 agree with Judge Woods's definition, in which case, you

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know, they would be estopped at trial to really sort of question the definition of QAnon follower. So, again, there's multiple reasons why you would want to know the position that a party has taken in the past on a particular subject, and that's really, that's what the series of document requests go to.

Again, I mean it's just a matter of covering all bases on what is an important issue in this case, and that is the phrase that they chose to use which is QAnon follower.

THE COURT: Okay, let me ask, Ms. Bolger, is it readily acceptable to search other public reports that CNN has done that use the word QAnon follower?

MS. BOLGER: No, that would be impossible. Two things, Your Honor. One is I don't have the requests that Mr. - Mr. Biss and I have not conferred about this. This is the first minute I understand this number 10 to be about more than one request. Right? He just said it's many requests, a series of requests. I don't know what they are. They haven't talked about it.

The only person whose definition of QAnon follower matters for the purposes of the state of mind of the speaker is Donie O'Sullivan. None of those reports in the document requests were Donie O'Sullivan

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reports. Right? It's what Donie knows. So to answer the question, ask the question of Donie O'Sullivan, what is a QAnon follower, one would ask that question of Donie O'Sullivan, and he would answer it. But what other people said a QAnon follower was, unless you can bring that home to Donie, as a matter of law, it doesn't impact Donie's state of mind. (indiscernible) *New York Times v. Sullivan*, you have to home it to the speaker. Right?

So the request is not relevant to the matter of defamation law. It's hugely overbroad. I wouldn't even know how to search it and calls for all kinds of news gathering materials again which is very, very significant and a huge privilege protected by the First Amendment, New York State Constitution, and New York statutory law. So these requests are really overbroad and irrelevant because all that matters is Donie, and Mr. Biss can ask Donie.

THE COURT: Okay, I need to move along because I do have another matter on at 11 o'clock, and I know we haven't even gotten to CNN's issues yet. So I'm going to deny that without prejudice. Mr. Biss, you can certainly ask Mr. O'Sullivan in his deposition if, you know, what he understood the term QAnon follower to be

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2 and what his sources of information about that were, and
3 if it turns out that it was other people at CNN or other
4 reports at CNN that informed that, then we can revisit
5 this issue. But for now I'm going to deny that one
6 without prejudice, also for the additional issue that
7 sounds like there may not even be an actual document
8 request for this one.

9 Just quickly, number 11, the tax returns.
10 According to Ms. Bolger's letter, Mr. Biss, she's
11 provided you with CNN's net worth. Is anything further
12 needed on this at this time?

13 MR. BISS: Well, Judge, she provided me with
14 somebody's statement of book value as the statement of
15 net worth, and I'm entitled to know what the support is
16 for that. I'm entitled to the tax returns, I'm entitled
17 to financial information. I mean they can come up with
18 any number they want. They can just, oh, here's the
19 book value. And I don't even know if that's a proper
20 accounting methodology. But they've given me a
21 document, and the document is book value. I just want
22 the underlying support for it, that's all.

23 THE COURT: Well, Ms. Bolger, are CNN's
24 financial results publicly reported anywhere?

25 MS. BOLGER: So the CNN net worth number is,

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did not exist in the world until this year when it was calculated as part of actually a litigation, it was calculated. It is not public otherwise. It didn't exist until this net worth calculation. And Mr. Biss is certainly not entitled to know anything more than net worth. Not only would CNN's value not be relevant until punitive damages, but you cannot disgorge profits in a defamation or (indiscernible) claim. Right? It's only relative to punitive. To open up CNN's accounting because of the possibility that you might have hypothetically get punitive damages would be unbelievably burdensome, and it would be unbelievably stressful in the company. And it's not necessary.

If Mr. Biss wants to come back to this later, maybe we can do it later, but right now net worth is all he needs if he wants punitive damages because you can't disgorge profits in a defamation or a falsehood action.

THE COURT: Right, and --

MR. BISS: Judge, I'm not asking --

THE COURT: -- CNN's not good for, I mean it's not like there's any concerns about their ability to pay a judgment in this case.

MS. BOLGER: Exactly, and we've also provided our insurance agreement. So he has our insurance

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2 agreement and our net worth, and that's all he needs.

3 THE COURT: Okay, Mr. Biss.

4 MR. BISS: Well, my position, Judge, is they
5 can tell me a number, but obviously what matters is the
6 truth. And so that's what discovery to me is all about
7 is searching for what the truth is here. And so yeah --

8 THE COURT: There's lots of things that we
9 care about the truth in, that we care about the truth
10 of. But in this case CNN is insured so that you have
11 that information, and you have their net worth, and
12 obviously there's no risk that they're not going to be
13 able to pay a judgment. It would be different if we
14 were concerned about their ability to pay a judgment. I
15 don't think you have expressed any concern about that.

16 MR. BISS: Judge, and, again, I agree with Ms.
17 Bolger on that, I have no concern, given the document
18 that they've provided me, that they would be able to pay
19 any judgment awarded.

20 THE COURT: Okay.

21 MR. BISS: But that's not, as I think I tried
22 to articulate, that's not really, I mean to me that's
23 not really the standard or shouldn't be the standard.
24 Rather the standard should be what's the truth here, and
25 so when I, when you make arguments to a jury, obviously

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you want to have the right, you want to have the truth,
you want to be telling the truth, not what CNN said
because it's good enough.

THE COURT: All right, well, I agree with you,
the standard is always the truth, but I'm not concerned
about there being any question about the truth of this.
And every person on the jury is going to refer to CNN
and make their inferences about its ability to pay any
damages to the plaintiff in this case if that's
appropriate.

Last issue is Mr. O'Sullivan's employment
agreement.

MR. BISS: I'm not sure what the objection is.
Obviously, in other CNN cases they've been ordered to
produce the agreements. They relate to his, relate to
malice obviously, his incentive to lie, and they're
relevant for other reasons as well. But --

THE COURT: How is it they're on his incentive
to lie?

MR. BISS: Well, he might be getting bonuses,
he might be getting perks, and this was addressed in the
Dershowitz case directly. And in the Dershowitz case
the relevance was that the anchors or the reporters,
whoever the people were involved or whatever their

1 PROCEEDINGS 38

2 correct term was, they might be making these scandalous
3 statements about the Flynn and about General Flynn and
4 about Trump because to increase ratings. And if they
5 increase ratings by X amount, they get a bonus at the
6 end of the year. We don't know any of that without
7 looking at Mr. O'Sullivan's pay structure and how he was
8 compensated by CNN. Dershowitz court said it's relevant
9 for that purpose, and it would be the same rationale
10 here.

11 THE COURT: All right, have you served a
12 request for this, Mr. Biss?

13 MR. BISS: Yes, I've served it, but in all
14 fairness we really haven't talked about it. I've
15 emailed my concerns --

16 THE COURT: Then I'm not deciding it today.
17 The parties can meet and confer on this issue, and if
18 you're not able to resolve it, you can raise it with me
19 again. But we need to move along.

20 MR. BISS: All right.

21 THE COURT: Okay, Ms. Bolger, I'm sorry that
22 I'm just now getting to all the issues raised in your
23 letter about the plaintiffs' production, but let's try
24 to move as efficiently as possible. So the first is
25 there are other social media accounts that you think the

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plaintiffs need to be searching.

MS. BOLGER: Email accounts. My number one is that we have four email accounts that we have discovered mostly through correspondence with third parties that we have subpoenaed, and we would, and they happen to be QAnon figures that we'd like Mr. Biss to search those email addresses, and Steven hasn't told me whether he would agree to do that.

THE COURT: Okay.

MR. BISS: Yes, Judge, we agreed to do that. I've already started that process. For instance, with Joe Flynn, I got a response from him already saying that's an old employer's email. He doesn't know where it came from, I don't know where it came from. But, again, I'm doing that with regard to I think four or five or six maybe emails that Ms. Bolger identified. The process has already started. I think there's one account, as I recall, Joe Flynn, there was either a General Flynn account that doesn't exist, the mailsol.net account as I remember. But we agreed to do that.

THE COURT: Okay.

MS. BOLGER: We know those exist because we've seen people send them emails to those accounts.

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THE COURT: Okay, great. Next, Ms. Bolger.

MS. BOLGER: The next for us, Your Honor, is that at the last conference you directed the plaintiffs to run search terms himself on any remotely accessible email accounts. Steven had not done that when we met and conferred last week, and you ordered him to do that. So I would like him to do that by a date certain.

THE COURT: You mean plaintiffs' counsel.

MR. BISS: And we agree to do that. Ms. Bolger or I think Ms. Cherner I think had suggested that I get the passwords for the account and just pretend I'm them, sign on to their Google accounts, and run it. So I'm going to do that. The reason that I haven't done it to date, Judge, is because of a summary judgment deadline in the Northern District of Iowa which the defendant's summary judgment motion included 200 and some odd exhibits. So it was just a massive undertaking. I haven't had any time to do it, but I agree to do that, and I'm going to do that. I've run the search for I can't remember if it's Laurie Flynn or Valerie Flynn. It's one of the plaintiffs in the Florida part of this case. So which returned nothing other than what we've produced. But I'll do that for all the other accounts as well. I'll personally sign on

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2 at my computer here in Charlottesville and search.

3 THE COURT: All right, well, have fun with
4 that.

5 MR. BISS: Yeah.

6 THE COURT: Next, Ms. Bolger.

7 MS. BOLGER: We would like - you had
8 instructed plaintiffs' counsel to advise us about what
9 search terms were used, and you actually explicitly at
10 the hearing just telling us that search terms from the
11 document productions wasn't enough. And we haven't
12 heard from Mr. Biss as to what search terms he used
13 other than to reference the document productions which
14 is what you had said not to do. And in addition, Your
15 Honor, we served additional requests that have
16 additional search terms.

17 So all I want Mr. Biss to do is sit down and
18 type up the search terms and what he told his clients to
19 do and what the date range was so we know what he's
20 doing. I mean we, our concern all along is that Mr.
21 Biss just said to his clients, hey, run a few search
22 terms, and we have no sense that Mr. Biss is really
23 controlling the process. So we'd like to know, we'd
24 like Mr. Biss to sit down and type out what the search
25 terms were, type out how he did, how they were doing the

1 PROCEEDINGS 42

2 search, and give us the date range so we know what
3 search terms were used against what account.

4 THE COURT: Mr. Biss.

5 MR. BISS: So, Your Honor, start with the date
6 range thing. So the date range is, as I advised Ms.
7 Bolger, the date range that we ran is, or that I
8 instructed them to run is the date range on the document
9 requests. It's so broad that sometimes they request
10 documents that don't exist because the companies that
11 they're looking for information on weren't created until
12 like 2020 but they go all the way back to 2016. So I
13 used their date range, I used their search terms, and in
14 my email to Ms. Bolger, I said, you know, we ran the
15 same search terms as are stated in your request for
16 production of documents 13 and 14 or whatever the
17 numbers are, and it's a long list of search terms. It
18 begins with, and I just always remember this, it begins
19 with somebody by the name of Acbug (phonetic) [sic], and
20 I think I just remember that because it's a very unique
21 last name. I never heard of it before, and none of my
22 clients had ever heard of it before. So ran --

23 (interposing)

24 MS. BOLGER: Those aren't all the search terms
25 though. Those were the people we asked you search for.

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2 I just --

3 MR. BISS: Right, so --

4 (interposing)

5 MS. BOLGER: Wait, there's other codes that I
6 would ask you to run.

7 THE COURT: Guys, guys, if you talk over each
8 other, it's not going to come up on the transcript. Go
9 ahead.

10 MR. BISS: So we not only ran the search terms
11 on these various people, but we also ran the search
12 terms on various hash tag concepts beginning with Acun
13 and Forchan and Take the Oath and WWG whatever. We ran
14 all those search terms. And one thing that Ms. Bolger
15 raised in our meet and confer on the 14th was, well, did
16 you search for all of the conferences that we
17 subpoenaed, like the QCon Live and Reawaken Tour and all
18 that, and there's a whole big list of these conferences
19 that they searched for. And, by the way, we've
20 responded to their discovery requests on all these
21 conference, we produced two documents which is all that
22 the Flynn, and any Flynn has.

23 So I agreed with Ms. Bolger I would expand the
24 search terms to include the names of all those
25 conferences that they've identified, like the latest one

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being the Digital Soldiers Conference. And just so the Court understands what Digital Soldiers is, General Flynn, you can't say he invented the term --

THE COURT: Honestly, I can't get a full - I understand, you've mentioned it before --

MR. BISS: Okay.

THE COURT: -- and I don't have time. I have other parties dialing in in eight minutes, and we have a lot to get through. So can you just simply provide, send to Ms. Bolger, as I told you to do at the last conference, a list of the search terms that you plugged in. It sounds like you've taken them from a couple of different places, just put it all in one email, and send it to her --

(interposing)

MR. BISS: I can do that.

THE COURT: Okay.

MR. BISS: Yes, Your Honor.

THE COURT: All right. Okay, next.

MS. BOLGER: Next is Mr. Biss needs to provide us with an email and a home number for Laurie Flynn for her Parler consent. He said he would do it, and he hasn't. Your Honor, for all of these things I'm just hoping we can get like a date certain by which we're

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2 going to get this information, but I understand, Mr.
3 Biss, you have agreed to give me that. He just hasn't.

4 THE COURT: Okay. All right --

5 MR. BISS: Judge, here's the problem on this
6 Parler is that she didn't have a Parler account. So I
7 can't give her what email was used or what phone number
8 was used because she never did it. And so --

9 MS. BOLGER: So we see evidence - we see
10 evidence of a Parler account in her name. If the email
11 accounts and the telephone number don't match, then we
12 won't get the information. If they match, we will. We
13 see some evidence of it. So if we can have the email
14 address and the telephone number, and it's wrong, then
15 we don't use it; and if it's right, we get the
16 information.

17 THE COURT: When - what is the date of the
18 Parler account that you see?

19 MS. BOLGER: Parler's fairly new, Your Honor.
20 I'm not sure I know the approximate date, but it would
21 be in this relevant time period. We don't have a date.

22 THE COURT: Because what I'm trying to do is
23 if you know when - I'm trying to get at what the
24 information you have tells you when she had a Parler
25 account because what Mr. Biss can do is find out what

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2 Ms. Leslie Flynn's email and phone number were at that
3 approximate time and that's the information you can give
4 to Parler.

5 MS. BOLGER: The Parler account has her photo
6 on it, but it doesn't not seem to have a date.

7 THE COURT: Okay.

8 MS. BOLGER: But we gave him the handle, but
9 we know the handle. So if we just get the email address
10 and the telephone number, then hopefully we'll get the
11 handle.

12 THE COURT: Okay. Can you provide that to Ms.
13 Bolger please, Mr. Bass?

14 MR. BISS: I will, Your Honor.

15 THE COURT: Okay, thank you. All right --

16 MS. BOLGER: The next thing, Your Honor, I'm
17 sorry, I didn't mean to talk over you, I was trying to
18 help. I apologize. The next thing for us is that Mr.
19 Biss provided us with a list of email accounts and
20 social media accounts he has searched. But we had also
21 understood that Your Honor ordered, asked him to check
22 their text messages. I asked Mr. Biss if he checked
23 their text messages and could provide me with those
24 phone numbers. He has not done so. I think that's
25 within the scope of your original order and would ask

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that he do so by a date certain.

THE COURT: Okay, Mr. Biss.

MR. BISS: Judge, my response to that was I'd have to fly down to Florida and check their phones or ask them to send their phones to me to do this. I've never done that, and I think that's grossly overbroad. I mean it's just completely unnecessary. I mean they've run that search. I don't have the resources to make these trips and get their phones or have - and they can't be without their telephones.

THE COURT: I asked you to - you're really, just the hyperbole is getting nauseating. I asked you to confirm that your clients had checked their texts. That doesn't require you to get on a plane. It requires you to get on the phone or on a videoconference with your client and ask, explain to them what searching for text messages means and ask them if they did that.

MR. BISS: I've done that.

THE COURT: Okay. All right.

MS. BOLGER: And can we have the telephone numbers that you searched along with mail accounts? Because, Your Honor, we did have to search email accounts, we did provide text messages. And, by the way, Mr. Biss did belatedly produce us one text message

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2 that's certainly implies the existence of a bunch of
3 other texts. So it would be helpful at least for us to
4 have some understanding of what devices were checked for
5 texts.

6 THE COURT: Mr. Biss, can you provide Ms.
7 Bolger with the list of phone numbers for which the
8 texts were search?

9 MR. BISS: Yeah, I can do that, Your Honor.

10 THE COURT: Okay, thank you. All right, Ms.
11 Bolger --

12 (interposing)

13 MS. BOLGER: Next is the client's computers,
14 laptops. We don't have any idea whether that was done.

15 THE COURT: Okay --

16 MR. BISS: It was done. It was done. All
17 repositories were done, Judge, because that's broad
18 enough to answer all those questions.

19 THE COURT: Okay. And then third-party
20 subpoenas.

21 MS. BOLGER: This was just a weird semantic
22 thing, Your Honor, that in the, his responses, in the
23 third-party and the party's responses to - actually,
24 Your Honor, can I list of devices that were searched?

25 THE COURT: Sorry?

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MS. BOLGER: Sorry, I interrupted myself.
Going back to the one we just talked about, the devices,
could we also ask Mr. Biss to tell us what he was
searched, what he searched, what list he searched?

THE COURT: No, no. You can ask them at their
depositions.

MS. BOLGER: Okay. So in response to some of
our requests, Mr. Biss said, provided the answer none
recalled. And I don't know what none recalled means.
None recalled would mean I can't remember, not I
searched and I didn't find anything. And it's just not
totally clear to me whether there was any actual
searching done or whether the answer was none recalled.
And given the fact that we don't know what search terms
were used, what dates range was used, what numbers were
used, that kind of stuff, that answer makes me nervous.

So I guess I'd just like some representation
from Mr. Biss that none recalled doesn't mean none
recalled. It means I did the search and didn't find
anything because those are two very different things.

THE COURT: Mr. Biss.

MR. BISS: So, Your Honor, I explained how I
did the search, and when they say none recalled, people
like General Flynn or Joe Flynn, they might've had

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2 thousands and thousands of social media tweets and
3 retweets and what have you. I mean they don't remember
4 how many. But if somebody, if for some reason they
5 retweeted something by Cynthia Acbug [sic], they don't
6 remember doing it, but they don't want to be trapped
7 into saying none and then have CNN say gotcha, you
8 really did do it. Here's one we found. That's why they
9 were cautious. They were just careful and said we don't
10 remember ever doing it.

11 So I mean I think that's the cautious and
12 prudent approach rather than saying, you know, we never
13 had any communications. So I think there's a material
14 difference between saying none and saying, you know, I
15 might've communicated with them, but I don't have any
16 recollection of that.

17 THE COURT: Okay, let me just interrupt you
18 for a second. If any of the parties on the Trombetta
19 matter, which I have one - this is Magistrate Judge Cave
20 speaking, if you called in for that matter, you can hang
21 up and call back into this line at 11:10. Sorry about
22 that.

23 Okay, so, Ms. Bolger, with that explanation, is
24 this something that you can just follow up in the
25 depositions about this?

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2 MS. BOLGER: It doesn't to me answer the
3 question, Your Honor. I'm obviously going to be guided
4 by you, and maybe it makes sense to you. But none
5 recalled, even the way Mr. Biss articulates it, they
6 don't remember doing it, but did they look, did they
7 check? Right? So you can remember a tweet, but you can
8 also go onto your Twitter account and look, and I don't
9 have a sense of whether they ever did that. And since
10 we're relying on their searching and Mr. Biss says he's
11 not doing the searching, I have no understanding of
12 whether they actually looked for these things or like,
13 yeah, I don't remember whether I did it, I may have. So
14 that's all I'm asking.

15 THE COURT: It sounds like you're getting the
16 latter answer to me. So I thought you were getting
17 Twitter authorizations.

18 MS. BOLGER: We did get Twitter
19 authorizations, yes --

20 THE COURT: You're going to get the contents
21 of their Twitter accounts.

22 MS. BOLGER: Well, we haven't gotten them yet,
23 but --

24 (interposing)

25 MS. BOLGER: Can I come back to this one if I

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need it, Your Honor?

THE COURT: Yes. That's fine. All right, so, Mr. Biss, you have, I guess CNN has a couple of items that it's following up on. One is any published content for paragraphs 2 and 15 of the complaint, and Mr. O'Sullivan's social media for anything about Jack or Leslie Flynn. And then Mr. Biss is working on the various searches. What are the parties thoughts about timing of getting this done? Let me start with you, Mr. Biss, because you have more work to do at the moment.

MR. BISS: Yeah, Judge, as I mentioned before, this summary judgment experience, I call it an experience because it was, I spent about 21 days having to respond to, put my opposition together. So I'm back up for air. I left the office at about midnight yesterday. I'm back up for air. But it's going to take me some time to obviously do this. I've already initiated the process, and I've already, the Flynnns have already responded, many of them have responded. Not all of them but many of them have responded. So I'll be able to, I would just ask till December 15. Just gives me, because I just, you know, obviously I don't have the luxury of, you know, people who, you know, can assist me with all this stuff.

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THE COURT: Okay.

MR. BISS: So I'm not asking for any sympathy or pity for that. I'm just saying that I just need some time as a human being to get all this done together with other responsibilities.

THE COURT: Okay. Ms. Bolger, that's reasonable to me. Obviously we're going to have to extend the deadline because we're supposed to be ending fact discovery by December 15. Obviously that's not going to happen. But I think that's a reasonable amount of time.

MS. BOLGER: Your Honor, if we extend the discovery, obviously then I'd have no reason to push, but this is just the plaintiffs' discovery, Your Honor. You know, we haven't gotten anything. We really need to have a sense of what's happening. So I would just, you know, I was going to ask if we wanted to talk about extending deadlines, that was my last question for you. And we've been really diligent from CNN's point of view, but we're just not getting much. So I was going to ask if we could extend deadlines like six months or so to take the pressure off, and if we did that, then the December 15 date obviously wouldn't (indiscernible).

THE COURT: I don't think, six months seems

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2 like a lot. I was thinking like three --

3 MS. BOLGER: Well, Your Honor, if I'm not
4 getting his stuff until December 15 --

5 THE COURT: But how many depositions do you
6 have to take? Jack and Leslie --

7 MS. BOLGER: Well, we served 28 third-party
8 subpoenas, and we're going to have to move to compel on
9 a couple of those. So I have a trial in late January
10 also, so I was hoping to avoid that, and it's Christmas
11 in December. I don't always find people to be
12 responsive which was kind of the thinking behind the six
13 months. But four months, something like that would be
14 fine.

15 THE COURT: We'll do April. Six months seems
16 to me to be too long, and if I give you that much time,
17 you'll use it. So miraculously things always seem to
18 get done in the amount of time that we have. So I'll
19 extend it until around April 15. We'll figure out like
20 a reasonable day of the week that week for the extension
21 of the fact discovery deadline, and we'll move
22 everything else accordingly. Is that all right with
23 you, Mr. Biss?

24 MR. BISS: It is, Judge.

25 THE COURT: Okay. Great. So December 15 for

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2 all the things that we listed for the plaintiffs to do
3 today, and I'll make the same deadline for CNN on their
4 couple of follow-up items. We'll extend the fact
5 discovery deadline to April, around April 15, and the
6 other deadlines accordingly. And I will do my best to
7 get a ruling to you on the privilege documents by next
8 week or so.

9 Is there anything else, Mr. Biss, on your
10 agenda?

11 MR. BISS: No, Your Honor, thank you.

12 THE COURT: All right, Ms. Bolger.

13 MS. BOLGER: Just one question which is in the
14 last order, Your Honor, you had ordered Mr. Biss to
15 produce something about social media accounts by
16 November 30.

17 THE COURT: Okay.

18 MS. BOLGER: I guess is that deadline now the
19 15th, changed to December 15?

20 THE COURT: I don't remember --

21 MR. BISS: Judge, I can do, I can get that to
22 Ms. Bolger by the 30th. However, I don't see any reason
23 why if I can do it all by the 15th, that'll, I would
24 request that. That would be - but --

25 MS. BOLGER: I don't disagree. That's fine

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with me. I just didn't know, I just wanted to not be
confused. So that's fine with me.

THE COURT: Let's make it all the cleanup by
December 15 of anything from last time and this time.
Okay? Good, thank you all. Have a nice Thanksgiving.
Thanks for working with me so efficiently today, and
have a nice holiday. We'll be adjourned.

MR. BISS: You too, Your Honor, thank you.

MS. BOLGER: Happy Thanksgiving, everybody.
Bye.

MR. BISS: Bye bye.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of FLYNN, et al. v. CABLE NEWS NETWORK, Docket #21cv2587, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Carole Ludwig

Signature_____

Carole Ludwig

Date: November 29, 2022